

NOT INCLUDED
IN BOUND VOLUMES

PMH
Baltimore, MD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES POSTAL SERVICE

and

Case 05-CA-119507

AMERICAN POSTAL WORKERS UNION,
AFL-CIO

ORDER DENYING MOTION
FOR RECONSIDERATION AND REOPENING THE RECORD

On June 15, 2016, a three-member panel of the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding.¹ The Board affirmed the decision of the administrative law judge and found that the Respondent, United States Postal Service, violated Section 8(a)(5) and (1) of the Act by failing to provide or unreasonably delaying in providing certain information requested by the Union on November 22, 2013. The Board rejected, however, a portion of the judge's recommended remedy, which would have permitted the Respondent to redact certain information before furnishing it to the Union, to bargain with the Union for a confidentiality agreement, and, upon concluding such agreement, to furnish any previously redacted information in unredacted form. The Board ordered the immediate and unredacted production of the requested information, finding that the Respondent had failed to timely assert a confidentiality interest or propose an accommodation and therefore had waived its opportunity to raise a confidentiality defense.²

¹ 364 NLRB No. 27.

² Member Miscimarra agreed with the judge's remedy.

On July 13, 2016, the Respondent filed a motion for reconsideration and/or reopening of the record. The Charging Party filed an opposition to the motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having duly considered the matter, we find that the Respondent has not identified any material error or demonstrated “extraordinary circumstances” warranting reconsideration under Section 102.48(d)(1) of the Board’s Rules and Regulations.

As to the Respondent’s motion to reopen the record, a party so moving must establish that the evidence it seeks to introduce was capable of being presented at the original hearing. *Rush University Medical Center*, 362 NLRB No. 23, slip op. at 1 fn. 2 (2015), enfd. __ F. 3d __ (D.C. Cir. Aug. 16, 2016); see also *Allis-Chalmers Corp.*, 286 NLRB 219, 219 fn.1 (1987) (denying motion to reopen record on the basis that the respondent “proffers evidence concerning an alleged event that occurred after the close of the hearing”). Here, the Respondent seeks to introduce evidence of events that postdated the close of the hearing. Accordingly, the motion to reopen the record is also denied.³

³ The Respondent maintains that the evidence it seeks to introduce would show that it has furnished the information at issue pursuant to a nondisclosure agreement the parties entered into after the hearing closed. The Respondent is free to raise these matters in compliance.

Member Miscimarra adheres to the views he expressed in the underlying decision. He agrees, however, that the Respondent has not demonstrated extraordinary circumstances warranting reconsideration. Member Miscimarra disagrees that a motion to reopen the record must relate to evidence that could have been presented at the original hearing, and he points out that Sec. 102.48(d) of the Board’s Rules and Regulations expressly permits a motion to reopen the record based on “evidence which has become available only since the close of the hearing,” which may include evidence regarding posthearing events. However, putting aside his separate views previously expressed in the underlying decision, Member Miscimarra finds that

Dated, Washington, D.C., August 26, 2016.

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

the additional evidence sought to be adduced would not require a different result, which warrants denial of the motion to reopen the record. Id.